

§ 565.9

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new or initial rates, on less than statutory notice under § 565.7. Section 9(c) of the Shipping Act of 1984 (46 U.S.C. 40703, 40704(a)) authorizes the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will consider such requests for special permission by controlled carriers pursuant to its procedures set forth at 46 CFR part 520.

[64 FR 8010, Feb. 18, 1999, as amended at 74 FR 50735, Oct. 1, 2009]

§ 565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.

(a)(1) *Request for justification.* Within 20 days of a request (with respect to its existing or proposed rates, charges, classifications, rules or regulations) from the Commission, each controlled carrier shall file a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(2) *Rate standards.* (i) In determining whether rates, charges, classifications, rules or regulations by a controlled carrier are just and reasonable, the Commission shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent rates, charges, classifications, rules or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual or constructive costs.

(ii) For the purposes of paragraph (a)(2)(i) of this section, *constructive costs* means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(iii) The Commission may also take into account other appropriate factors, including, but not limited to, whether:

(A) The rates, charges, classifications, rules or regulations are the same as or similar to those published or as-

sessed by other carriers in the same trade;

(B) The rates, charges, classifications, rules or regulations are required to assure movement of particular cargo in the trade; or

(C) The rates, charges, classifications, rules or regulations are required to maintain acceptable continuity, level or quality of common carrier service to or from affected ports.

(3) *Time for determination.* The Commission shall determine within 120 days of the receipt of information requested by the Commission under this section, whether the rates, charges, classifications, rules or regulations of a controlled carrier may be unjust and unreasonable. Whenever the Commission is of the opinion that the rates, charges, classifications, rules or regulations published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules or regulations should not be prohibited.

(b) *Suspension.* Pending a decision on whether to prohibit the rates, charges, classifications, rules or regulations of a controlled carrier, the Commission may suspend the rates, charges, classifications, rules or regulations. See § 565.10.

(c) *Prohibition.* The Commission shall prohibit the use of any rates, charges, classifications, rules or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this paragraph, the burden of proof is on the controlled carrier to demonstrate that its rates, charges, classifications, rules or regulations are just and reasonable. The use of rates, charges, classifications, rules or regulations published or assessed by a controlled carrier that have been suspended or prohibited by the Commission is unlawful.

(d) *Publication.* All final orders of prohibition shall be published in the FEDERAL REGISTER.

§ 565.10 Suspension procedures, period of suspension, and replacement rates.

(a)(1) *Suspension prior to effective date.* Pending a determination as to their